

EXHIBIT

18

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

TRAVELERS CASUALTY AND SURETY
COMPANY as Administrator for RELIANCE
INSURANCE COMPANY,

Plaintiff,

vs

THE DORMITORY AUTHORITY OF THE STATE
OF NEW YORK, TDX CONSTRUCTION CORP., and
KOHN, PEDERSON, FOX & ASSOCIATES, P.C.,

Defendants.

DORMITORY AUHTORITY OF THE STATE OF
NEW YORK,

Third-Party Plaintiff,

vs.

TRATAROS CONSTRUCTION, INC. AND
TRAVELERS CASUALTY AND SURETY
COMPANY,

Third-Party Defendants.

Civil Action No.: 04Civ5101 (HB)

**AFFIDAVIT OF COUNSEL, DAVID
C. DREIFUSS, ESQ., IN SUPPORT
OF PLAINTIFF'S OPPOSITION TO
KOHN, PEDERSON, FOX &
ASSOCIATES, P.C.'S MOTION TO
DISMISS**

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MORRIS)

I, DAVID C. DREIFUSS, ESQ., being duly sworn, depose and say:

1. I am a partner with the law firm of Dreifuss Bonacci & Parker, LLP, counsel for the Plaintiff, Travelers Casualty and Surety Company as Administrator for Reliance Insurance Company (hereinafter "Travelers"). I submit this Affidavit in support of Travelers' Opposition to the Motion to Dismiss brought by defendant Kohn, Pederson, Fox & Associates, P.C. (hereinafter "KPF"). I make this Affidavit based upon a review of the files and records that

Travelers has obtained from its principal, third-party defendant, Trataros Construction, Inc. (hereinafter “Trataros”) and based upon information our firm has gathered in its investigation of this matter to date.

2. As explained further in the Affidavit of John Scarpellino of Travelers submitted herewith, Trataros successfully bid on the following two construction contracts with DASNY for general construction of a vertical college campus:

- a. The Baruch College—Site ‘B’ General Construction #1 Work, Contract No. 15, DA6500-1802-2176 for \$50,222,000.00 dated April 22, 1998 (hereinafter “Contract 15”), a true copy of which is attached hereto as **Exhibit A**; and
- b. The Baruch College—Site ‘B’ General Construction #2 Work, Contract No. 16, DA6500-1802-2178 for \$24,140,000.00 dated August 27, 1998 (hereinafter “Contract 16”), a true copy of which is attached hereto as **Exhibit H**.

(hereinafter collectively referred to as “the project”).

3. Contracts 15 and 16 are comprised of numerous supporting documents, which together comprise the complete terms and conditions of these respective contracts. Paragraph 1 of Contracts 15 and 16 incorporated a number of “Contract Documents” by reference to the “General Conditions”. See **Exhibits A ¶ 1, H ¶ 1**. Paragraph 1 of Contracts 15 and 16 also incorporated a number of specifications and architectural drawings, prepared by KPF and/or KPF’s design team, by reference to a list of specifications and drawings appended to the respective contracts. See **Exhibits A ¶ 1, H ¶ 1**. For the convenience of the Court and for purposes of this Opposition, a true copy of the following excerpts of the supporting documents are attached hereto:

- a. General Conditions, Contract 15, **Exhibit B**;
- b. Notice to Bidders/Information for Bidders, Contract 15, **Exhibit C**;
- c. General Requirements/Supplemental Requirements/Scope of Work, Contract 15, **Exhibit D**;

- d. KPF's Addendum No. 1, Contract 15, **Exhibit E**;
- e. KPF's Addendum No. 2, Contract 15, **Exhibit F**;
- f. KPF's Addendum No. 3, Contract 15, **Exhibit G**;
- g. General Conditions, Contract 16, **Exhibit I**;
- h. Notice to Bidders/Information for Bidders, Contract 16, **Exhibit J**;
- i. General Requirements/Supplemental Requirements/Scope of Work, Contract 16, **Exhibit K**;
- j. KPF's Addendum No. 1, Contract 16, **Exhibit L**; and
- k. KPF's Addendum No. 2, Contract 16, **Exhibit M**;

The General Conditions on both Contract 15 and 16 define the term "Contract Documents" as including the "Notice to Bidders", "Information for Bidders", "General Conditions", "General Requirements", among numerous other documents. *See* definition of "Contract Documents", **Exhibits B** § 1.01, **I** §1.01.

4. Section I of the Information for Bidders provides, in pertinent part, that

Prospective Bidders shall examine the Contract Documents carefully and, before bidding, shall make a *written request to the Architect*, with a copy forwarded to the Owner, for an interpretation or correction of any ambiguity, inconsistency or error therein which should be discovered by a reasonably prudent Bidder.... *Such interpretation or correction, as well as any additional Contract provisions the Owner shall decide to include shall be issued in writing by the Architect as an addendum....*

See Exhibits C § I(A) (emphasis added), **J** § I(A) (emphasis added).

5. Sub-section I(B) of the Information for Bidders further provides that

[o]nly interpretations, corrections or additional Contract provisions made in writing by the Architect as addenda shall be binding. *No officer, agent or employee of the Owner or the Architect is authorized to explain or to interpret the Contract Documents by any other method and any such explanation or interpretation, if given, must not be relied upon* by the Bidder.

See Exhibits C § I(B) (emphasis added), **J** § I(B) (emphasis added).

6. Additionally, Section I(A) provides that the interpretations/additions to the contract issued by the architect are to be transmitted “to each prospective Bidder recorded as having received a copy of the Contract Documents from the Architect....” **Exhibits C § I(A), J § I(A).**

DAVID C. DREIFUSS, ESQ. (DD:1180)

Sworn to and subscribed
before me this _____
day of September 2004.

Notary Public

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